

Present were: Brown (Chair); Bargnesi (Acting Clerk); McDonough, Member; Oltman, Rechisky and Wilson (Associate Members).

The meeting opened at 6:33 p.m. Chair Brown announced that due to a clerical error, the public hearings for 12-14 Florence Street and 41 Porter Road will not be heard tonight. They will be heard at the June 5, 2014 meeting.

Petition No.: Z-14-17

Premises affected: 15 County Road

Petitioner: South Andover Development

Members: Brown (Chair); Bargnesi (Acting Clerk); Oltman, Rechisky and Wilson (Associate Members).

Petitioner's attorney had submitted a written request to continue the public hearing to the June meeting. Oltman made a motion to allow the request to continue the public hearing to the June meeting. Rechisky seconded the motion and the Board voted unanimously to allow the continuance.

Petition No.: Z-14-30

Premises affected: 64 Summer Street

Petitioner: ZCR

Members: Brown (Chair); Bargnesi (Acting Clerk); Oltman, Rechisky and Wilson (Associate Members).

McDonough recused herself from the hearing due to her having hired the same counsel as the petitioner and left the room for the duration of the hearing. Brown disclosed that he has had past business dealings with the petitioner's cousin, Joe Ratté. No one objected to his participation. Mark Ratté, for ZCR, requests a variance from Art. VIII, §7.9.4.7 &/or a dimensional special permit from Art. VIII, §7.9 to subdivide one lot with an historic house into 2 lots. The property is located in the SRA district. Attorney Mark Johnson represented the petitioner, giving a background on the Collins Farm House at 64 Summer St. It is believed the barn that was originally there was moved, or on a neighboring parcel at 58 Summer St. The proposal is to subdivide the lot, keeping the historic house & reconstructing the barn on the new lot. Both lots will meet the dimensional requirement for area under §7.9 and are consistent with the neighborhood. Johnson argued that a variance is not required since the lots meet dimensional requirements. This is similar to the application he represented for 21 River Street. He submitted ZBA Decisions 4051 & 4058 along with the plot plan for 21 River St. The proposed 2500 sq. ft. house to be constructed on the new lot will be a single family replica of the barn. The design has been reviewed by Preservation Commission. Johnson submitted photos to the Board. Karen Herman, Preservation Commission Chair, 50 Sunset Rock Rd., informed the Board that the commission reviewed the project on 7/14/14 and unanimously support the dimensional special permit. She gave an overview of the history & significance of the house (vernacular Greek revival farm house, circa 1880 owned by the Collins family farm). Mark Ratté, developer, has vast historic preservation experience. Herman explained the preservation restriction required at the state level, in perpetuity, to preserve the original house. Johnson explained that the proposed changes to the historic house will include the removal of vinyl siding & doors (he submitted an email memo regarding the removal of a side door). Mark Ratté, 20 Chatham Rd., Andover, spoke about his past work & the proposed work to this 2-family house, his mother-in-law's investment property, in particular that as much of the original siding & trim will be kept as possible. Johnson added that the preservation restriction, recorded at the Registry of Deeds, requires approval prior to any changes, including landscaping. The proposed single family dwelling will be located as close as possible to the existing 2-family structure to preserve the trees, 25' from the lot line. Johnson submitted photos of the trees between 58 & 64 Summer Street. A letter of support dated 5-1-14 from the new owners, David & Joanne Shorey) of 113 Pine Street was submitted into the record. Brown asked Johnson to enumerate the findings under Section 7.9.5 in order for the ZBA to grant a special permit. Johnson outlined the eminent demolition of the existing house which needs extensive

renovation and the attempt to avoid demolition; as well as that the lot has municipal water & sewer required. The Board discussed the demolition delay bylaw, which is not in effect in this case. Johnson argued that the Dimensional Special Permit for Historic Preservation is a tool to preserve historic structures, including avoiding demolition & making money to pay for renovations. Brown inquired as to the evidence that demolition will result. Johnson & Ratté explained that it is a process (12 months) that hasn't been started yet, but that it is preferable to save the house & build a new one on the new lot. Herman informed the Board that there is no option to deny a request to demolish, just a delay of up to 12 months. Wilson asked for a time line if they were to request demolition. Inspector of Buildings explained that they would first have to file for a demolition permit, then appear before Preservation Commission for a public hearing at which the length of the demolition delay would be determined depending on the case to ensure public safety and only after the delay is final would they be issued a raze permit. The Board discussed what measures are taken to preserve a structure: documentation of structural aspect is done either by salvaging pieces of the structure or photographing the structure. Brown commented that the standards and requirements of Section 7.9.4.7 are not met in this case. Johnson disagreed noting the similarity to the 21 River Street case and that the original preservation bylaw was created to allow a house to be moved from one lot to another, but that the dimensional requirements of 7.9.4 also apply to an historic house that will not be moved. He emphasized that once 7.9.4.3 is met, the lots comply. Brown disagreed; the parent lot must meet the zoning district's dimensional requirements. He then read into the record an email exchange between himself, Town Counsel and Steve Colyer, former Director of Planning & co-author of this bylaw, in which they agreed with Brown's interpretation that the bylaw was not intended to allow a parent lot to be rendered non-conforming. Johnson & Herman, also co-authors of this bylaw, disagreed. Brown then asked for public comments / questions. Attorney Brian Vaughn, of Smolack & Vaughn, representing Pete & Amanda Singer, 58 Summer St., spoke in opposition. Vaughn argued that a variance is required but this proposal does not qualify because it is a self-created hardship. In order to grant a special permit, the Board has to make certain findings. Vaughn argued that in this case, there are alternatives & this proposal is not eligible for a special permit either. This bylaw is to preserve historic structures worth saving, including the setting, but the applicant hasn't come up with a plan to save the structure, except minimal changes. Vaughn further stated that the original historic barn is still standing, at 58 Summer St. Pete Singer, 58 Summer St., spoke of his continued restoration work on the original barn, which was moved 30' at some point. Peter Morris, 112 Pine St., commented on how the proposal does not encourage yard space, but will increase density. Lisa Comosa, 66 Summer St., agreed that a smaller house on an appropriately sized lot & that converting the existing 2-family house to a single family would be better. Mr. Comosa, 66 Summer St., added that the new structure will detract from the historic setting. Mark Ratté explained that a 1920 addition converted the house to a 2-family & has been used as such since then. Herman informed the Board that the Collins' house was added to the historic survey in the 1970's. Further, the Collins' family donated a reservation and green space between Washington Ave & Pine Street. The Board then discussed the size of the existing and proposed structure (2300 sq ft +/- vs. 2500 sq ft) as well as tree maintenance / removal (Ratté stated that all will remain). Johnson submitted a photo of the existing barn, one of multiple historic barns. He reminded the Board that under Art. VIII, §7.9.1, the Board has the authority to issue a special permit to modify the dimensional requirements and that this proposal meets the bylaw, with no variance required, even though both lots meet the dimensional requirements. The Board asked the public their feelings on the possible construction of a new single or two family dwelling being built on the lot if this proposal is denied. The public was generally in favor. Bargnesi made a motion to waive the view & close the public hearing. Oltman seconded the motion & the Board voted (5-0) to waive the view & close the public hearing. The Board then proceeded to deliberate. Bargnesi voiced concern over the findings for a special permit & does not feel the proposal is necessary to preserve the historic structure nor in the Town's best interest, neither a variance necessary. Rechisky agreed, in favor of preservation but a special permit is not appropriate in this case. Wilson pointed out that the findings in 7.9.5 can be met, the new lot meets the requirements of 7.9.4 and that she doesn't follow Brown's interpretation of 7.9.4.7. The Board discussed that there are alternatives to preservation, the abutters being in favor of demolition & the developer willingness to preserve.

Additionally, it was debated what the purpose of the ZBA would be in such cases: maintain historic structures or maintain the character of the town. Brown explained that the first such application had a parent parcel that met the zoning district's dimensional requirements and that the ZBA is a reactive body; unable to save all historic buildings. In this case, the significance is bound more to the owners than the structure, similar to many others in town. Brown feels a variance is required; however the statutory requirements haven't been met & if granted, would be counter to the bylaw. He concluded that evidence of demolition is speculative. Rechisky feels that the proposal is not appropriate; a variance is required but the requirements aren't met. Brown suggested not taking a formal vote tonight, but having 1-2 members draft parts of the decision, then deliberate & vote in June. Rechisky made a motion to continue the deliberation to 6/5/14. Oltman seconded the motion & the Board voted (5-0) to continue the deliberation to 6/5/14.

Petition No.: Z-14-24

Premises affected: 8 Rogers Brook East

Petitioner: Norton

Members: Brown (Chair); Bargnesi (Acting Clerk); McDonough, Member; Associate Members Oltman (in place of Magenheimer) & Rechisky (in place of Boness).

Brown reminded the Board that this is a continued deliberation only. Rechisky asked if it is appropriate to include a restriction of 'not to exceed' in the decision. Brown noted that typically the wording is 'in substantial conformance with the (plot) plan'. Rechisky made a motion to approve the draft decision as submitted. Bargnesi seconded the motion & the Board voted (5-0) to approve the variance from section 4.1.2 with conditions as drafted in the decision.

Petition No.: Z-14-32

Premises affected: 11 Woburn St

Petitioner: Frerichs

Members: Brown (Chair); Bargnesi (Acting Clerk); Oltman, Rechisky and Wilson (Associate Members).

Brown informed the Board that this is a deliberation only for the demolition & reconstruction with the standard findings plus a release deed delivered to the Town regarding the right of way. Oltman made a motion to approve the special permit with conditions. Wilson seconded the motion & the Board voted (5-0) to grant the special permit with conditions.

Petition No.: Z-14-9

Premises affected: 2 Elm Square

Petitioner: Musgrove, LLC

Members: Brown (Chair); Bargnesi (Acting Clerk); McDonough, Member; Oltman and Wilson (Associate Members).

Attorney Jared Eigerman, Rick Harvey, of Harvey Signs, and Kate Leonard, Manager of Musgrove LLC, were present. Eigerman submitted a draft decision, photo renditions of the 8th sign at the rear advertizing the building, not a tenant. He noted that the name "Andover Place" will not be used. Harvey reviewed the photos of the 30" wide banners compared to the 24". Eigerman showed the Board ½ size samples of the banners. The Board discussed the advantage of the wider banner allowing larger, horizontal text as opposed to smaller, vertical text on the narrower banner. Eigerman noted that only 2 banners will include multiple tenant names in a vertical orientation. Eigerman pointed out that the Barnard building on Main Street has banners that range from 10-13' high. The 3 blank banners will display the complex name. The Board inquired as to life expectancy of the banners. Harvey explained that it depends on the weather, but are very durable. There being no further questions from the Board, neither the public, Oltman made a motion to waive the site view & close the public hearing. Bargnesi seconded the motion & the Board voted (6-0) to waive the view &

close the hearing. The Board then proceeded to deliberate. Brown felt the proposal is appropriate for the bulk/architecture of the building. McDonough made a motion to approve the requested variances with conditions (in conformance with plans, drawings submitted). Wilson seconded the motion & the Board voted unanimously to grant the variances with the standard conditions. Brown will write the decision.

Petition No.: Z-14-15

Premises affected: 12 Tiffany Ln

Petitioner: Cavanaugh

Members: Brown (Chair); McDonough (Acting Clerk); Oltman, Rechisky and Wilson (Associate Members).

Bernie Paquin, Engineer, represented the petitioner in this continued hearing. He gave an overview of what has changed since the last meeting: met with Conservation Commission on 4/29/14, changed plans pursuant to Conservation's comments (37.8' = nearest point of original proposal, decreased to 37.2'); added run-off, infiltration & mitigation & permanent wetlands protection markers at the edge of the existing lawn. Paquin explained that the changes enhance water quality as it enters the WPOD & are approved by Conservation. Additionally, the entire lot will be restricted from using herbicides, pesticides or fertilizers by specific language in the deed. Brown noted that the prohibitions are also in the Conservation Commission's Order of Conditions. Paquin emphasized that if the additions are not built, there will be no restrictions instituted. There being no further comments or questions from the Board, neither the public, McDonough made a motion to waive the site view & close the public hearing. Wilson seconded the motion & the Board voted (5-0) to waive the view & close the hearing. The Board proceeded to deliberate the matter. Brown noted his satisfaction that the WPOD is protected & the restrictions are met, with the hardship being the inability to expand the house due to the wetlands / WPOD. McDonough made a motion to approve the grant the requested variance with the usual conditions (conformance with revised plans). Wilson seconded the motion & the Board voted (5-0) to grant the variance with conditions. Oltman will write the decision.

Petition No.: Z-14-16

Premises affected: 97 North St

Petitioner: Frerichs

Members: Brown (Chair); Magenheim (Clerk); Boness and Bargnesi, Members; and Wilson, Associate Member.

Chair Brown announced that Member McDonough had left the room & has recused herself from this case since she has retained the petitioner's attorney representing him tonight. Attorney Don Borenstein represented Mr. Frerichs, who was present for the hearing. Also present was Kevin Cavanaugh, designer, & John Hunt, builder. The proposal is to raze & reconstruct a single family dwelling. The existing lot & structure are non-conforming. Mr. Frerichs bought the house in August 2013 to rehabilitate the 1st floor & existing detached garage, as well as to add a 2nd story to the existing house. Due to the structural status of the house, most of the structure was demolished. Brown inquired how far down the existing house was razed. Inspector of Buildings Chris Clemente informed the Board that an 8'x10' section of the original floor at the rear is all that remains; the rest was demolished to the foundation. However, the building permit was issued to raise the roof to add the 2nd story. Borenstein explained that a stop work order was issued & complied with and now they have come before the ZBA to expand the 1s floor, as well as adding a 2nd floor & attached garage. The Board discussed the current setbacks (the front meets the 40' minimum). Borenstein then reviewed the changes in area & volume of the existing & proposed structures (a table was submitted with the packet). The total original area, including the garage, was 2047 sq. ft., or 1700 without the garage. The proposed area is 3611 sq. ft. including the attic. He noted that the average area of houses in the neighborhood is 3200 sq. ft. and that this is a neighborhood in transition, in which the new house will fit well. The Board whether the house conformed to the bylaw at some point. Borenstein explained that that the house was built in 1907 on a larger lot by the Boy Scouts. Then in 1954 an Approval Not

Required (ANR) plan was filed, which indicates it complied at the signing of the ANR. The taking in 1957 took a strip of land for well purposes for drinking water where the Rec Park is now located. The Assessor's Map shows a dashed line while the GIS map shows no right of way (r.o.w.). However, they intend to record a release deed to the right of way & change the lot's access via Woburn Street directly while reserving the right to access the r.o.w. He noted that the Town still uses the r.o.w. quite a bit still, especially in the summertime. Borenstein noted one change to the draft conditions for approval that he submitted in condition #2: they will *deliver*, rather than record the release deed. The Town would have to record it. Wilson made a motion to waive the site view & close the public hearing. Magenheim seconded the motion & the Board voted (5-0) to waive the site view & close the hearing. The Board then proceeded to deliberate. Wilson voiced concern with the draft finding that the structure conformed to the zoning bylaw at some point in time. Brown voiced concern over the rational for a 4'x4' extension of the porch. Bargnesi agreed. Brown explained how to apply Section 3.3.7 to demolition & reconstruction: as defined by the courts, 'reconstruction' encompasses raze & build in a different location on the lot, as in this case. Magenheim noted that they wouldn't be in this situation if they had followed their original plan. Brown suggested that it can be done under Section 3.3.5 as a lawfully non-conforming structure with the evidence of the Assessor's record stating a 1907 construction date & the 1954 plan depicting 17,000 sq. ft. of lot area with 100' of frontage, which conformed at the time the plan was recorded. Subsequently, the Town taking reduced the lot size and then zoning bylaw changes rendered it more non-conforming. It is in keeping with the neighborhood and will not be substantially more detrimental. Brown suggested that it can be approved by a special permit under Section 3.3.5 with the conditions that it be constructed in conformance with the certified plot plan and architectural drawings submitted, as well as conformance with draft condition #3 as submitted by Borenstein to deliver to the Town the release deed. Wilson, Boness, Magenheim, and Bargnesi all agreed. Brown then volunteered to draft the decision and to continue the deliberation to next month. Bargnesi made a motion to continue the deliberation to next month. Boness seconded the motion. Brown made a motion to deny the special permit under Section 3.3.7 as not applicable. The Board voted (5-0) to continue the deliberation to next month & deny the special permit under 3.3.7 as not applicable.

Petition No.: Z-14-16

Premises affected: 97 North Street

Petitioner: Kennedy-Anderson

Members: Brown (Chair); Bargnesi (Acting Clerk); Oltman, Bordonaro and Wilson, Associate Member.

This is a continued public hearing. Present was Steve Hinckley, potential buyer/builder. At the Board's request, he had an engineer draft a plan depicting the footprint of a house and met with Jacki Byerley, Town Planner, and his engineer. 80' of frontage is required to create a 1-lot subdivision; however this lot does not meet that requirement. Additionally, a driveway has to be built along/within the first 100' of the roadway, but they would not be able to meet this requirement either. Byerley had sent the engineer's letter via email to the Board. Brown confirmed that the sense was that they would not be able to get the waivers for a 1-lot subdivision. Hinckley agreed, reminding the Board that they said that they would be able to grant a variance if they were unable to meet the requirements for a 1-lot subdivision, an expensive process with potential denial. Chris Clemente, Inspector of Buildings, affirmed that in order to appear before the Planning Board for a 1-lot subdivision, the applicant would have to submit full engineering at a significant expense. There being no further questions or comments from the Board, neither the public, Wilson made a motion to waive the site view & close the public hearing. Oltman seconded the motion & the Board voted (5-0) to waive the view & close the hearing. The Board then proceeded to deliberate. Brown noted that the petitioner has made great efforts, demonstrating hardship (financial & related to the irregular shape of the lot). Rechisky agreed. There being no other discussion, Wilson made a motion to grant a variance from the frontage requirement and to make the appropriate findings to allow the construction of a single family dwelling generally as shown on the plans submitted so long as all the

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setbacks are met and that relief is for frontage only. Rechisky seconded the motion & the Board voted unanimously to grant the variance with conditions. Rechisky will write the decision.

Approval of Minutes

Brown requested holding off on approving the April minutes until the alternates for each case can be determined.

There being no other business before the Board, McDonough made a motion to adjourn the meeting. Oltman seconded the motion and the Board voted (5-0) to adjourn the meeting. The meeting adjourned at 8:59 p.m.

List of Documents Received at the April 3, 2014 Andover Zoning Board of Appeals Meeting			
Case Number	Petitioner(s)	Site Address	Item Description
Z-14-31	Sal's Park Street Andover LLC	34 Park Street	3 photos of outdoor seating at Sal's Boston location
Z-14-32	Frerichs	11 Woburn Street	10 photos & assessor's map, zoning table comparing original & proposed structures